

REMARKS

Claims 1-24 are pending, with claims 1-8, 12, 14-15, 21, and 23-24 being currently withdrawn from consideration. Of the presently pending claims, independent claim 9 and withdrawn independent claim 1 are currently amended.

Independent claim 9 and withdrawn independent claim 1 have been amended to more clearly recite that the heart-mounted structure comprises, in part, an assistive heart-actuating basal dome structure that conforms to a general shape of a basal surface of a ventricular portion of the heart (underlining for emphasis). In addition, the opening in the dome structure has been more clearly defined so as to surround a great vessel of the heart (underlining for emphasis). Support for the amendments to these claims can be found throughout the specification and, more specifically, at least at page 11, line 21 to page 12, line 8; page 18, lines 9-11; and Figs. 1a, 2a-2c, 6, 7, 8a, and 8b.

Turning to the substantive rejections, Examiner was of the view that independent claim 9 prior to amendment was anticipated by Heilman et al. U.S. Patent No. 5,558,617 ("Heilman"). In rejecting the claims over Heilman, Examiner asserts that Heilman discloses a heart mounted structure comprising an assistive heart-actuating dome structure configured for being coupled with a surface of a ventricular portion of the heart, and that the dome structure, proximate the opening, is configured to interface with at least one of a chamber and a great vessel of the heart. Examiner further asserts that the device is capable of being placed at the basal surface of the heart although not shown. *See* 2nd Paragraph, Page 4 of the Official Action. Applicant submits that the rejection is in error and, in any event, overcome by claim 9 as

presently amended.

With respect to the anticipation rejections, Examiner certainly appreciates that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Heilman fails to disclose all of the features of amended claim 9 for the reasons that follow.

Independent claim 9 now calls for a basal dome structure, such basal dome structure further conforms to a general shape of a basal surface of a ventricular portion of the heart and has an opening therein that surrounds a great vessel, e.g., the aorta or pulmonary artery, of the heart.

Upon close review of Heilman, this reference appears to be directed to a ventricular assist device for a heart that includes a compression band-stay-pad assembly for encircling substantially the heart perimeter and an elongated band member or chain disposed in a sealed protective structure filled with a lubricating medium. A net structure is further suspended below the device to support the apical portion of the heart. To that end, should an infarct (death) of the heart's muscle occur from a blockage of a coronary artery, the band-stay-pad assembly with its attached net then will provide support and thus avoid or limit any aneurysmal ballooning or rupture of the heart that otherwise might occur. *See*, e.g., abstract; col. 4, lines 13-20; col. 9, lines 34-39; and Figs. 3 and 4A.

In view of the above, the Heilman band-stay-pad assembly with its attached net clearly fails to teach (or suggest) a basal dome structure, let alone one that conforms to the basal

surface of a ventricular portion of the heart, as required by claim 9. Instead, Heilman appears to teach a device having an apical net structure that is suspended below the ventricular assist device to support the apical portion of the heart. That net structure is purposefully and specifically so positioned such that it, in combination with the band-stay-pad assembly which itself is situated about the heart perimeter, will provide support and thus avoid or limit any aneurysmal ballooning or rupture of the heart that otherwise might occur. In stark contrast, Applicant's basal dome structure is so situated on the basal surface of a ventricular portion of the heart to provide a stable anchoring point for other internal and external components or systems that stabilize and/or mechanically actuate the ventricular walls for supplementation or replacement of myocardial contraction in the pumping of blood. *See* page 10, lines 17-22 of the specification, for example. Accordingly, Heilman does not teach (or suggest) Applicant's basal dome structure.

In addition, the net structure of Heilman is simply devoid of any openings that could actually accommodate, i.e., surround, one or more of the great vessels, e.g., the aorta or pulmonary artery, of the heart, as also required by claim 9. Clearly, without such an opening, the net structure actually disallows placement of the Heilman device on the basal surface of the ventricular portion of the heart, despite Examiner's assertion to contrary. Indeed, such openings are not all contemplated by Heilman as the net structure, again, is specifically provided to support the apical portion of the heart. Consequently, the Heilman net structure, unlike Applicant's basal dome structure, does not and cannot conform to a general shape of the basal surface of a ventricular portion of the heart, as is required by claim 9. Finally, Heilman with its apical net structure not only fails to provide at least one opening that can surround a great vessel

of the heart but further fails to teach (or suggest) an opening that is configured to interface with at least one of an atrial chamber or a great vessel of the heart, which is also required by claim 9.

For all of the above reasons, Heilman does not teach Applicant's independent claim 9, or any of its dependent claims. Therefore, the rejection of independent claim 9 must be withdrawn.

Conclusion

As a result of the remarks given herein, Applicant submits that the rejections of the pending claims have been overcome. Therefore, Applicant respectfully submits that this case is in condition for allowance and requests allowance of the pending claims.

If Examiner believes any detailed language of the claims requires further discussion, Examiner is respectfully asked to telephone the undersigned attorney so that the matter may be promptly resolved. Applicant also has submitted all fees believed to be necessary herewith. Should any additional fees or surcharges be deemed necessary, Examiner has authorization to charge fees or credit any overpayment to Deposit Account No. 23-3000.

Respectfully submitted,
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